



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS



IN THE MATTER OF:

QUANTUM REALTY COMPANY, L.C.

HUDSON REFINING
SUPERFUND SITE
CUSHING, OKLAHOMA

RESPONDENT

DOCKET NO. CERCLA-06-2001-2752

RECOMMENDED DECISION

On June 19, 2001, the United States Environmental Protection Agency, Region 6 (EPA) sent a letter to Quantum Realty Company, L.C. (Respondent) notifying the Respondent that it had perfected a lien upon property located on or about the Hudson Refinery Superfund Site, consisting of approximately 200 acres in Section 33, Township 18 North, Range 5 East, and in Section 4, Township 17 North, Range 5 East, in Cushing, Payne County, Oklahoma (Site), near the intersection of Highway 33 and North Depot Street.

The letter stated that EPA had determined that the Respondent is the owner of the Site, and that the lien was perfected pursuant to Section 107(1)(1) of CERCLA, 42 U.S.C. § 9607(1)(1). The letter further stated that the lien is intended to secure payment to the United States of costs and damages for which the United States claims that the Respondent is liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and that the cost of the response actions

performed at the Site through EPA funding is approximately \$8,902,414.97.

EPA gave the Respondent fourteen (14) days to request a meeting to present information that EPA did not have a reasonable basis for perfecting the lien. On July 3, 2001, the Respondent notified EPA that it was disputing the basis upon which EPA perfected its lien because the Respondent claims that the work was being performed on land not owned by the Respondent. The Respondent requested a meeting in which to explain its claim.

Pursuant to the *Supplemental Guidance on Federal Superfund Liens* (July 29, 1993) (*Supplemental Guidance*), as a Regional Judicial Officer, I was appointed as the neutral official to schedule and conduct the meeting. The *Supplemental Guidance* provides that the neutral official set up a time and location of the meeting. During individual calls with the respective counsel (because I was unable to get both on the line at the same time), I was informed by Mr. Jeff Lee, counsel for the Respondent, on July 18, 2001, that he did not think he was going to attend, that he did not know who was going to attend, and that he would be on vacation the next two weeks. I asked him to fax me a contact so that I could notify the person of the meeting. I told him the only name I had was his. I never received a response from Mr. Lee, so a Scheduling Notice was issued on July 26, 2001. The Scheduling Order was sent to Mr. Lee (who had filed the response on behalf of the Respondent), since no other appearances had been filed. The return receipt green card shows that Mr. Lee received

the Scheduling Notice on August 1, 2001. The meeting was set for Wednesday, August 22, 2001.

On August 22, 2001, the meeting was held at the EPA Regional Hearing Room in Dallas, Texas. However, only EPA was in attendance. Neither the Respondent nor the Respondent's counsel made an appearance. Therefore, based on Respondent's failure to submit any information to support its claim in its July 3, 2001 letter that the work was being performed on land not owned by the Respondent, and its failure appear at the August 22, 2001 meeting, I find that the Respondent has waived any right to challenge EPA's determination in this proceeding that the statutory requirements for perfecting a lien have been met.

This Recommended Decision does not bar EPA or the Respondent from raising any claims or defenses in later proceedings. It is also not a binding determination of liability and has no preclusive effect.

Dated this 3rd day of October, 2001.

/S/
Evan L. Pearson
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of October, 2001, I served true and correct copies of the foregoing Recommended Decision on the following in the manner indicated below:

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED _____

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Lorena S. Vaughn
Regional Hearing Clerk